



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN VIRGINIA REGIONAL OFFICE
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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

~~Jeffery A. Steers~~
~~Regional Director~~

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO SPOTSYLVANIA COUNTY FOR MASSAPONAX INTERCEPTOR SEWER

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15 8(a) and 8(d) and 10.1-1185 between the State Water Control Board and Spotsylvania County regarding the Massaponax Interceptor Sewer, for the purpose of resolving certain violations of the State Water Control Law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Butzner Section" means the approximately 8,600 foot long section of the Massaponax Interceptor located between Leavells Road and Jefferson Davis Highway.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality.
6. "Order" means this document, also known as a Consent Special Order.

7. "Massaponax Interceptor" means the main sewer line that receives wastewater flows from numerous tributary sewers and conveys wastewater to the Massaponax Wastewater Treatment Plant.
8. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
9. "Spotsylvania" means Spotsylvania County.
10. "Utilities Department" means Spotsylvania County Utilities Department.

SECTION C: Findings of Fact and Conclusions of Law

1. Spotsylvania County is responsible for the operation and maintenance of the Massaponax Interceptor, which conveys sewage to the Massaponax Wastewater Treatment Plant, which is the subject of VPDES Permit No. VA0025658. The Butzner Section is a portion of the Massaponax Interceptor located between Leavells Road and Jefferson Davis Highway. This section consists of an 18-inch diameter line.
2. The Board has evidence to indicate that Spotsylvania has violated Va. Code § 62.1-44.5 by discharging sewage without a permit into State waters as a result of overflows from the Butzner Section of the Massaponax Interceptor. DEQ issued a Notice of Violation (NOV) on January 17, 2007 citing this violation.
3. Spotsylvania reported sanitary sewer overflows (SSOs) from the Butzner Section to DEQ on November 14, 2006 and continuing since late December at which time the SSOs became a recurring event primarily on weekend days. Spotsylvania also continues to respond promptly to the overflows by cleaning and liming the affected areas.
4. Spotsylvania promptly requested a meeting with DEQ upon determining that the SSOs could be chronic at this location. At a meeting with DEQ staff on January 5, 2007, Spotsylvania explained that the SSOs resulted from exceeding the capacity of the transmission pipe in the Butzner Section. The capacity of the transmission pipe was exceeded earlier than Spotsylvania's original estimates. A transmission capacity management program has been incorporated in this Order in order to facilitate more accurate predictions in the future of transmission pipe capacity.
5. During the meeting on January 5, 2007, Spotsylvania informed DEQ of Spotsylvania's past, ongoing, and contemplated future corrective actions. As an additional outcome of the meeting on January 5, 2007, DEQ requested and Spotsylvania agreed that Spotsylvania submit a report detailing the possible solutions to the overflows. Spotsylvania provided this report on February 26, 2007.

6. DEQ staff attended a site visit of the area on January 11, 2007 where they observed multiple manholes where SSOs had occurred and one manhole that was actively overflowing into Massaponax Creek.
7. DEQ staff met with the Utilities Department on March 13, 2007 to discuss the report received from Spotsylvania on February 26, 2007. Spotsylvania proposed two short-term fixes including (a) elevating specific manholes in, or immediately tributary to, the Butzner Section (completed) and (b) diverting flow from the Cherry Road pump station (incorporated into Appendix A of this Order).
8. Spotsylvania also presented the permanent solution, which is to replace the Butzner Section of the Massaponax Interceptor with a larger diameter pipe providing greater capacity. This work has already been planned as part of Phase II of Spotsylvania's Massaponax Sewer Interceptor Replacement Project. A schedule of completion for the pipe replacement is required pursuant to Appendix A of this Order.
9. Spotsylvania has undertaken several actions to date to address and resolve SSOs from the Butzner Section, including ongoing SSO reporting and cleanup, which will continue for any subsequent SSOs pending completion of the line replacement as provided in Appendix A of this Order. Other actions include public notification, water quality sampling and analysis, conception and implementation of an engineering plan to reduce wastewater flows in the Butzner Section by flow diversions, and advertisement for, and receipt of, bids for Phase II of the Massaponax Sewer Interceptor Replacement Project.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d) and upon consideration of Va. Code § 10.1-1186.2, orders Spotsylvania County and Spotsylvania County agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Spotsylvania County, and Spotsylvania County voluntarily agrees, to perform the actions described below and in Appendices A and B of this Order. In addition, the Board orders Spotsylvania, and Spotsylvania voluntarily agrees, to a civil charge of \$16,000.00 in settlement of the violations cited in this Order to be paid as follows:

1. Spotsylvania shall pay \$ 1,600.00 of the civil charge within 30 days of the effective date of the Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

The payment shall include Spotsylvania's Federal Tax ID Number.

2. Spotsylvania shall satisfy \$ 14,400.00 of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in Appendix B of this Order.
3. By signing this Order, Spotsylvania certifies that it has not commenced performance of the SEP before DEQ identified the violations in the Order and approved the SEP.
4. Spotsylvania acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by Spotsylvania to a third party, shall not relieve Spotsylvania of its responsibility to complete the SEP as described in this Order.
5. In the event that Spotsylvania publicizes the SEP or the SEP results, Spotsylvania shall state in a prominent manner that the project is part of a settlement for an enforcement action.
6. The Department has the sole discretion to:
 - a. Authorize any alternate SEP proposed by the Facility; and
 - b. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.
7. Should the Department determine that Spotsylvania has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify Spotsylvania in writing. Within 30 days of being notified, Spotsylvania shall pay the amount specified in Paragraph D.2., above, as provided in D., above.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Spotsylvania, for good cause shown by Spotsylvania, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Spotsylvania by DEQ on January 17, 2007 or reported to DEQ prior to the date of execution. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Spotsylvania admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.


4. Spotsylvania declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
5. Failure by Spotsylvania to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. Spotsylvania shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Spotsylvania shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Spotsylvania shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 3 business days of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.
8. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
9. Any plans, reports, schedules or specifications attached hereto or submitted by Spotsylvania and approved by the Department pursuant to this Order are

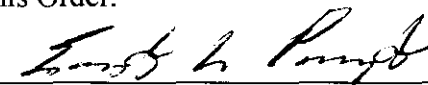
incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order

10. This Order shall become effective upon execution by both the Director or his designee and Spotsylvania. Notwithstanding the foregoing, Spotsylvania agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Spotsylvania. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Spotsylvania from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Spotsylvania voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of September 26, 2007.


Thomas A. Faha, NRO Regional Director
Department of Environmental Quality

Spotsylvania voluntarily agrees to the issuance of this Order.

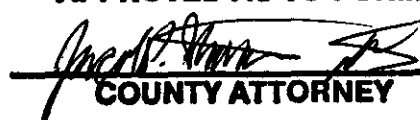
By: 

Date: 9/3/07

Commonwealth of Virginia

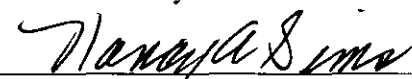
City/County of SPOTSYLVANIA

APPROVED AS TO FORM:


COUNTY ATTORNEY

The foregoing document was signed and acknowledged before me this 3rd day of August, 2007, by ERNEST L. PENNINGTON, who is
(name)

DEPUTY COUNTY ADMINISTRATOR
(title) of Spotsylvania, on behalf of the County.


Notary Public

My commission expires: June 30, 2009
Registration No. 171 287

APPENDIX A

Spotsylvania County shall:

1. Implement the following projects to reduce wastewater flow to the Massaponax Interceptor and maintain such projects in operation at least until substantial completion of the replacement of the Butzner Section of the Massaponax Interceptor as required by paragraph 6 below:
 - a. By June 1, 2007, design, construct, and place in operation the Milgarden Pump Station diversion (approximately 44,000 gallons per day).
 - b. By July 1, 2007, design, construct, and place in operation the Wishner Pump Station diversion (approximately 275,000 gallons per day).
 - c. By October 1, 2007, design, construct, and place in operation the Cherry Road Pump Station diversion (approximately 110,000 gallons per day).
 - d. By October 1, 2007, design, construct, and place in operation the Queens Mill Pump Station diversion (approximately 110,000 gallons per day).
2. Beginning on August 15, 2007 and continuing until completion of the diversion projects required under paragraph 1 above, provide DEQ with a monthly progress report regarding the status of such projects. Said report shall be due on the 15th of each month.
3. Submit to DEQ by August 15, 2007 an evaluation of the potential diversion of Ni River Water Treatment Plant process wastewater to the emergency sludge holding basins during weekends without materially affecting Ni River treatment capacity or performance. If the evaluation recommends implementation of this diversion, the report shall include a plan and schedule which upon approval by DEQ shall be an enforceable part of this Order.
4. Beginning June 1, 2007 and continuing until the completion of the replacement of the Butzner Section of the Massaponax Interceptor pursuant to paragraph 6 below, when issuing local approvals pursuant to 9 VAC 25-790-220 for sewer line extensions tributary to the Butzner Section, include a written condition requiring that connections to such extensions shall not be made and placed in operation until adequate capacity is created by diversions and other short-term solutions or by replacement of the Butzner Section of the Massaponax Interceptor. To maintain adequate capacity until completion of the Butzner section replacement, the aggregate of these new connections shall not exceed twenty-five (25) percent of the connections diverted pursuant to paragraphs 1.c., 1.d., and 2 plus any additional future diversions not specified herein, if any.

5. Submit to DEQ by September 1, 2007 for review and comment a report and schedule of implementation outlining Spotsylvania's development of a transmission capacity management system for the Massaponax Interceptor in order to make timely and accurate estimates of sewer system capacity. The development of the system shall include an evaluation of converting the sewer model used for the design of the Massaponax Interceptor replacement into an operational and predictive model. Beginning October 1, 2007, and continuing until completion of development of the system, submit a monthly progress report on the status of the development and implementation of the transmission capacity management system. Said reports shall be due on the 15th of each month.
6. By August 1, 2007, issue a notice to proceed to the contractor for completion of replacement of the 18 inch Butzner Section line with a 30 and 36 inch line, as described in Phase II of the Massaponax Sewer Interceptor Replacement Project, which shall be completed no later than May 31, 2008.
7. Beginning on August 15, 2007 and continuing until completion of the Butzner Section line replacement required under paragraph 6 of Appendix A of this Order, provide DEQ with a monthly progress report regarding the status of the construction of the new 30 and 36 inch line. Said report shall be due on the 15th of each month.
8. In order to collect information for determining the water quality impacts of the SSOs on Massaponax Creek, Spotsylvania shall submit to DEQ by August 1, 2007 for review and approval a proposed monitoring program. Spotsylvania shall continue monitoring until completion of the Butzner Section line replacement required under paragraph 6 of Appendix A of this Order unless Spotsylvania and DEQ agree to terminate it earlier (e.g. if the diversions or other short-term solutions are successful in discontinuing overflow events). Additionally, this monitoring requirement may be modified by mutual agreement of the parties. Spotsylvania shall submit monitoring results by the 15th of the month following the month during which monitoring was conducted.
9. By July 1, 2007, develop and implement a public awareness plan including the following elements: (a) installing warning signs from the upstream overflow point in the Butzner Section to Benchmark Road, (b) mailing a notice letter to addresses identified as within 1,000 feet of the Massaponax Creek from the upper overflow point in the Butzner Section to the Rappahannock River, and (c) posting information regarding the Massaponax Interceptor on the Spotsylvania Utilities Department's webpage. This public awareness plan shall be updated as needed to reflect changing conditions (e.g., a change in the number, intensity, or location of SSOs). The plan shall remain in effect until completion of the Butzner Section line replacement as required under paragraph 6 of Appendix A of this Order unless Spotsylvania and DEQ agree to terminate it earlier (e.g., if the diversions or other short-term measures are successful in discontinuing overflow events). Necessary updates and revisions to the plan shall be submitted to DEQ for review and approval and shall be, upon approval, an enforceable part of this Order.
10. Continue to report all SSO events including the method of SSO detection used by County staff such as visual inspection or flow or level meter readings and also an estimation of

the volume of sewage released. Should Spotsylvania depend solely on metered readings to determine and report SSO events then it shall provide a detailed explanation regarding how the readings identify how many and which manholes overflowed in order to determine where clean up efforts should be focused. Spotsylvania should also continue to clean and lime affected areas within 24 hours of SSOs and include this information with the SSO report. Said reports shall be submitted within the timeframe and contain the data elements required by the State Water Control Law, its associated regulations and the County's VPDES Permit.

11. Prepare and submit to DEQ, for review and comment by November 1, 2007, a report that describes the Infiltration and Inflow (I&I) Program administered by the County. This report shall include at a minimum: (1) a description of all methods of I&I detection, evaluations and analysis used by the County; (2) a schedule on which said methods of detection, evaluation and analysis have been or will be performed in order to eliminate or reduce I&I within the entire Massaponax collection system; (3) the number of dedicated staff for I&I reduction and elimination activities, their duties and their management structure; and (4) budget information for I&I evaluation and reduction/elimination activities for the past five years. Additionally, the report shall include description of contemplated future I&I Program activities within the Massaponax watershed for the next three years. This report is for informational purposes and the County reserves the right to adjust its I&I Program in its discretion.
12. All correspondence required by this Order, with the exception of the civil charge as listed in Section D, shall be submitted to the NRO mailing address:

**Virginia Department of Environmental Quality
Northern Virginia Regional Office
Attn: Sarah Baker
13901 Crown Court
Woodbridge, VA 22193**

APPENDIX B

Spotsylvania County shall perform the SEP identified below in the manner specified in this Appendix.

1. The SEP to be performed by Spotsylvania County is donating \$14,400.00 to the Tri-County/City Soil and Water Conservation District (SWCD) for water quality monitoring and non-point source pollution control within the Massaponax Creek.
2. The SEP shall be completed within 30 days of the execution of this Order.
3. Spotsylvania shall verify its completion of the SEP in writing, either in the form of a certification from a Certified Public Accountant or a certification from a responsible County official that the SEP has been completed in accordance with the terms of this Order. Spotsylvania County shall submit the verification to DEQ within 60 days from the effective date of the Order.
4. If the SEP has not or cannot be completed as described in the Order, Spotsylvania shall notify DEQ in writing no later than 30 days from the execution of this Order. Such notification shall include:
 - a. an alternate SEP proposal, or
 - b. payment of the amount specified in Paragraph D.2 as described in Paragraph D.1.